



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. McTIGUE
DIRECTOR

July 25, 1994
AO-94-22

Thomas R. Kiley, Esq.
Cosgrove, Eisenberg and Kiley, P.C.
One International Place - Suite 820
Boston, MA 02110

Re: Payment of golf tournament fees by political
committees

Dear Mr. Kiley:

This letter is in response to your May 24, 1994 request for an advisory opinion regarding whether candidates may cause certain expenses related to golf tournaments to be paid from campaign funds.

You have been asked by a number of office holders whether and under what circumstances their political committees may pay golf tournament fees and whether and under what circumstances office holders may host tournaments. In addition, you are the treasurer of and counsel to two committees. One of the committees is organized on behalf of a clerk of courts. Among the clerk's key contributors and supporters are lawyers who practice in the county in which he serves as clerk. He frequently participates in bar related activities. Each June the bar association of the county in which the clerk serves and a municipal bar association in that county hold an annual golf outing, which is one of the association's best attended events of the year. The clerk would like to participate in the event to the fullest extent permitted by law.

You have asked if the clerk's political committee may (1) pay the clerk's greens fees; (2) sponsor the tournament, which means paying for a hole, paying for a foursome, or providing prize money of between \$200 and \$500. You have also asked if other candidates can use their committees' funds to pay for participation in the tournament without violating the \$100 limit on contributions between political committees contained in M.G.L. c. 55, s. 6.

You have stated that to the extent the clerk sponsors the tournament, such sponsorship will be verbally publicized by the bar association to those who participate.

For the reasons which follow, a candidate's committee may pay for the candidate's participation in, and sponsorship of, the golf tournament, if such expenditures are in compliance with M.G.L. c. 55, s. 6 and 970 CMR 2.06(3)(b). In addition, other candidates can participate in the tournament and have their committees pay for such participation, without violating the restrictions, contained in M.G.L. c. 55, s. 6, on contributions by one political committee to another political committee.

M.G.L. c. 55, s. 6 provides, in pertinent part, that political committees organized on behalf of candidates not running for constitutional office¹

may receive, pay and expend money or other things of value for the enhancement of the political future of the candidate . . ., for which the committee was organized so long as such expenditure is not primarily for the candidate's or any other person's personal use, provided, however, that the director shall establish reasonable rules and regulations concerning such expenditures . . . [emphasis added].

Expenditures designed to enhance a candidate's political future, in addition to not being for "personal use," must also bear a reasonable connection to the candidate's nomination or election to office. See M.G.L. c. 55, s. 1.

Pursuant to M.G.L. c. 55, ss. 3 and 6, the office has issued regulations to further define expenditures which may be made by political committees. See 970 CMR 2.06. A review of M.G.L. c. 55 and the regulations leads me to conclude that your client's committee may pay the greens fees required for your client's participation in the tournament. In addition, the committee may sponsor the tournament, if the expenditures made to sponsor the tournament are of reasonable value, and if the committee complies with the conditions set forth in 970 CMR 2.06(3)(b).

(1) Participation in golf tournament.

Where an activity is primarily social or recreational in nature it is this office's opinion that such activity is primarily personal. You have stated that "the personal reasons for participating [in the tournament] are secondary to the political" In determining whether the activity would be primarily social or recreational, your client's stated purpose

1. "Constitutional" offices include governor, lieutenant governor, state secretary, treasurer and receiver general, and auditor. M.G.L. c. 55, s. 6 allows committees organized on behalf of candidates seeking these offices to make expenditures which are "reasonable and necessary" and "directly related to the campaign of such candidate" if the expenditure is "not primarily for the candidate's or any other person's personal use." We interpret the term "reasonable and necessary" in this context to mean "reasonably useful and proper." See AO-91-23.

for participating in the tournament is only one factor to be considered. Ultimately, whether the purpose of his participation is primarily social or recreational would be determined by considering many factors. However, given the facts stated in your letter, it would appear that your client's committee could pay the greens fees for participating in the tournament.²

You have stated that the tournament would take place in the county in which the candidate holds office, and that the primary participants in the tournament are attorneys who practice in the county in which the clerk of courts holds office. The participants are likely constituents and are potential supporters of the candidate. In these circumstances, it is not difficult to see how the expenditure to participate in the tournament might enhance the candidate's political future, particularly if the candidate were to receive publicity during the event.

(2) Sponsorship of golf tournament.

The campaign finance law does not specifically address the propriety of a political committee's sponsoring of a golf tournament or similar event. A political committee's payment of a foursome's greens fees or purchase of an award, however, is analogous to the purchase of gifts, and is therefore subject to 970 CMR 2.06(3), which governs gifts "as well as any expenditures which are similar to [gifts]."

Where a candidate wishes to use campaign funds to pay for gifts, not only must the gifts be given primarily to enhance the political future of the candidate, but also the gifts must comply with the requirements of 970 CMR 2.06(3)(b)2. The regulation states that campaign funds may be used to pay for gifts to persons other than campaign workers where the gifts are "of reasonable value" and the expenditure complies with the following conditions:

The political committee or candidate will receive publicity and foster political goodwill as a result of making the gift or contribution, but provided further that:

- a. the candidate or treasurer has no personal relationship with the individual or his family; and.

². Clearly, many social or recreational activities which are primarily for personal enjoyment might also, to a lesser degree, enhance a candidate's political future. Such activities cannot be paid for by a candidate's political committee. By way of example, a candidate who regularly plays golf with friends or colleagues cannot, on a given weekend, use campaign funds to pay greens fees, even if conversation is likely to be about legislation or political matters.

- b. the gift is appropriate to the occasion which has prompted the gift; and
- c. making such gift is usual and customary practice of the political committee; and
- d. the gift would not be made but for the interest in it enhancing the political future of the candidate or principle for which the committee was organized.

Your letter does not provide sufficient information to apply the regulation conclusively to the proposed gifts. Based on the information you have provided, however, I will consider each requirement separately.

(a) Enhancement of political future

You have stated that "under no circumstances would the clerk sponsor a hole or foursome if he were not a candidate for office." Whether the expenditure would enhance the candidate's political future would be determined after a consideration of facts relating to the candidate's sponsorship of the event. However, given your representations, it would appear that the proposed expenditure would be made primarily to enhance the candidate's political future.

(b) Reasonable value

Your letter indicates that the maximum to be donated to sponsor the tournament would be \$500. We would interpret "reasonable value" to mean an expenditure which is within the range of what is generally accepted to be average for such sponsorship. Therefore, the relative wealth of a particular committee, candidate or recipient of funds would be irrelevant. See AO-93-17.

(c) Publicity

In this office's opinion the candidate is likely to receive some kind of publicity and foster goodwill as a result of making the described expenditure. You have indicated that persons attending the tournament will be told who is sponsoring the event. In the context of the regulation, we would interpret "publicity" broadly to mean receiving some kind of public recognition, whether formal or informal, of the gift. Giving a gift to a constituent would, in almost any circumstance, result in receiving goodwill in return. See AO-94-15.

(d) Personal relationship

This office interprets "personal relationship" in the context of the regulation to include relatives and friends including colleagues, employees or other persons with whom the candidate socializes personally. Therefore, a political committee may not pay for a gift given to a recipient who is a

family member or friend even if the recipient is also a campaign worker, constituent or supporter. Your letter suggests that the identity of the ultimate recipient(s) is unknown. If the candidate sponsors an award, the award could not be given to someone who is "personally related to" the candidate.

(e) Appropriateness to occasion

Gifts are appropriate to an occasion if the occasion generally calls for providing such a gift. Gifts of substantial value are generally not appropriate. In this context, the relevant question is whether the sponsorship of a golf tournament, in the amount to be spent for this purpose, would be appropriate.

(f) Usual and customary practice

You have indicated that sponsorship of the golf tournament would be the usual and customary practice of the committee and that the expenditure would not be made but for the candidate's interest in enhancing his political future.

(3) Limitation on contributions between political committees.

I understand from your letter that the tournament which your candidate's committee wishes to sponsor as described above "is not run by th[at] committee."³ I also understand that any payment of greens fees made by the political committees of other candidates who wish to participate in the tournament will be paid directly to the bar association or golf club and will be made primarily for the purpose of influencing their own nomination or election.

The campaign finance law prohibits a political committee organized on behalf of one candidate for the Legislature from contributing more than \$100 in a calendar year to a political committee organized on behalf of another candidate. M.G.L. c. 55, s. 6, second paragraph. The campaign finance law defines the term "contribution" broadly to include a "transfer of money or anything of value between political committees" given for the purpose of influencing the nomination or election of a candidate. See M.G.L. c. 55, s. 1.

Since the payments at issue will not be made to your candidate's political committee, and since the payments, even if made to the bar association or golf club, are not being made

3. Although this opinion is limited to the facts stated in your letter, in which you state that your candidate's committee would like to sponsor a tournament, our analysis may also be applicable where a committee "runs" or otherwise takes a more active role in a tournament. However, because the facts presented in your letter are limited to the described "sponsored" tournament, this opinion is limited the facts presented.

primarily to influence the nomination or election of your candidate, they would not be considered "contributions" to your candidate or your candidate's political committee. However, to the extent that any payments are made by other political committees to your candidate's political committee, such payments would be "transfers" and, therefore, presumptively "contributions" subject to the limitations contained in section 6.⁴

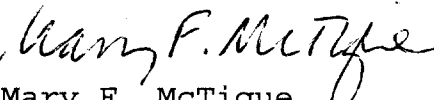
(4) Conclusion

Under the circumstances described in your letter and the assumptions set forth in this letter, the clerk's political committee may pay for the candidate's participation in, and sponsorship of, the golf tournament, and other candidates can participate in the event without violating the M.G.L. c. 55, s. 6.

This opinion has been rendered solely on the basis of representations made in your letter and telephone conversation with staff of this office, and solely in the context of M.G.L. c. 55.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Very truly yours,


Mary F. McTigue
Director

MFM/cp

⁴. In Weld for Governor v. Director of OCPF, 407 Mass. 761 (1990), the Supreme Judicial Court stated that not all transfers between political committees should be considered "contributions." The court stated that a transfer is a "contribution" only if it is made for the purpose of influencing the nomination or election of the recipient. 407 Mass. at 771. If the transfers described in your letter are to be made to a political committee, they would be considered "contributions" absent facts which conclusively demonstrate a contrary intent.